

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

CURTIS V. MOORE,)
)
 Plaintiff,)
)
 vs.) **Case No. CIV-05-1488-M**
)
)
RON WARD, et al.,)
)
 Defendants.)

REPORT AND RECOMMENDATION

Plaintiff, a state prisoner appearing *pro se*, brings this action pursuant to 42 U.S.C. § 1983, alleging a violation of his constitutional rights. Pursuant to an order by United States District Judge Vicki Miles-LaGrange, the matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). For the reasons set forth herein, the undersigned recommends that the complaint be dismissed without prejudice.

Pursuant to an order entered December 27, 2005, Plaintiff was advised that on or before January 16, 2006, he must either file an application to proceed *in forma pauperis* or pay the \$250.00 filing fee. He was further advised that failure to pay the filing fee in full or submit an application to proceed *in forma pauperis* by that date could result in dismissal of this action without prejudice to its refiling.

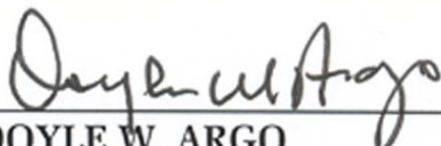
A review of the court file reveals that Plaintiff has not paid the filing fee, filed an application for leave to proceed *in forma pauperis*, requested an extension of time to comply, or demonstrated good cause for his failure to do so. Thus, it is recommended that the action be dismissed without prejudice to refiling. See Local Civil Rule 3.3; Amen v. United States, No. 96-5146, 1997 WL 158163 (10th Cir. April 1, 1997) (district court should

have dismissed the complaint without prejudice when the plaintiff failed to pay the filing fee).¹

RECOMMENDATION

Accordingly, it is recommended that Plaintiff's complaint be dismissed without prejudice to refiling due to his failure to pay the filing fee or to submit an application to proceed *in forma pauperis*. Plaintiff is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by the 23rd day of February, 2006, in accordance with 28 U.S.C. § 636 and Local Civil Rule 72.1(a). Plaintiff is further advised that failure to make timely objection to this Report and Recommendation waives his right to appellate review of both factual and legal issues contained herein. Moore v. United States, 950 F.2d 656 (10th Cir. 1991). This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 3rd day of February, 2006.



DOYLE W. ARGO
UNITED STATES MAGISTRATE JUDGE

¹ Unpublished disposition cited as persuasive authority pursuant to Tenth Circuit Rule 36.3